

104 FERC ¶ 61,212
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

MidAmerican Energy Company

Docket No. EL03-130-000

v.

Mid-Continent Area Power Pool

Mid-Continent Area Power Pool

Docket No. ER03-972-000

ORDER GRANTING COMPLAINT IN PART, DENYING IN PART, AND
ACCEPTING TARIFF SHEETS

(Issued August 18, 2003)

1. In this order, the Commission grants in part and denies in part a complaint in which MidAmerican Energy Company (MidAmerican) requests that the Commission direct the Mid-Continent Area Power Pool (MAPP) to cease a business practice that requires redirected firm service to be equal to the remaining term of the original reservation under MAPP's Service Schedule F.¹ We also accept for filing MAPP's proposed amendment to Schedule F, effective June 21, 2003. This order benefits customers by promoting flexibility for transmission customers, which is necessary for a truly competitive market.

¹Schedule F provides for short-term firm capacity and firm energy transmission services and non-firm coordination transmission services among MAPP members. All coordination transactions among MAPP members with a term of six months or less and that must be reserved no more than 120 days in advance must use Schedule F, while all coordination transactions among MAPP members with a term of more than six months must use the members' open access transmission tariffs (OATT).

I. Background

2. On July 14, 1997, MAPP filed a revised Schedule F in compliance with Order No. 888,² which the Commission accepted for filing, subject to refund and further action.³ The Commission later directed MAPP to adopt in Schedule F Section 22 of the Order No. 888 pro forma OATT, which permits firm point-to-point transmission customers to request changes in the points of receipt and delivery on an as-available basis.⁴ MAPP filed a revised Schedule F that adopted Section 22 from the pro forma OATT with several modifications.⁵ We accepted MAPP's revised Schedule F with modifications not relevant here.⁶

²Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. Regulations Preambles, January 1991-June 1996 ¶ 31,036 (1996) (Order No. 888), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (Order No. 888-A), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248, order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

³Mid-Continent Area Power Pool, 78 FERC ¶ 61,203 (1997).

⁴Mid-Continent Area Power Pool, 87 FERC ¶ 61,075 at 61,315, reh'g denied, 89 FERC ¶ 61,135 (1999), aff'd sub nom. Alliant Energy Corp. v. FERC, 253 F.3d 748 (D.C. Cir. 2001).

⁵The proposed firm redirect provision in Schedule F (Section 21.2) contained certain modifications to the Commission's pro forma tariff language, which are shown below in strikeout/underline form. The Commission accepted the modified language:

Any request by a Transmission Customer to modify Receipt and Delivery Points on a firm basis shall be treated as a new request for service in accordance with Section 17 hereof, and the charges applicable to said modified Receipt and Delivery Points shall apply. Such Transmission Customer shall not be obligated to pay any additional deposit if the capacity reservation does not exceed the amount reserved in the existing Service Agreement, provided that, if the charges applicable to the modified Receipt and Delivery Points differ from the charges applicable to the original Receipt and Delivery Points, a Transmission Customer that was required to

3. On April 27, 2001, MAPP submitted a letter informing the Commission that, effective April 30, 2001, MAPP would be implementing as a "Business Practice" "additional procedures to further implement the redirecting of firm service provided for in Schedule F."⁷ Section 1(c) of the Business Practice provides that: "End time of REDIRECT request must equal end time of ORIGINAL reservation." In other words, Section 1(c) permits a transmission customer holding a firm point-to-point transmission reservation to redirect service to a different point of receipt and/or delivery point only for the balance of the transmission service term. MAPP further stated that the Business Practice was consistent with the then current provisions of Schedule F.⁸

4. On May 29, 2001, the Director of the Division of Rate Applications, Office of Markets, Tariffs and Rates, acting under delegated authority, accepted MAPP's submittal for filing.

pay a deposit shall pay an additional deposit or receive a refund of its prior deposit (plus any applicable interest) equal to the difference in the deposits applicable to the original and new service. While such new request is pending, the Transmission Customer shall retain its priority for service at the existing firm Receipt and Delivery Points specified in its Service Agreement.

⁶Mid-Continent Area Power Pool, 88 FERC ¶ 61,157 (1999).

⁷MAPP transmittal letter at 2.

⁸Id.

II. Docket No. EL03-130-000

A. MidAmerican's Complaint

5. On May 30, 2003, MidAmerican filed a complaint challenging MAPP's Business Practice as contrary to the Commission's decision in Dynegy Power, which rejected a Southwest Power Pool (SPP) business practice that required redirected firm service to be extended for the remaining duration of the original service under SPP's OATT.⁹ It asserts that Section 21.2 of Schedule F in large part is modeled after Section 22.2 of the Commission's Order No. 888 pro forma transmission tariff and that MAPP's Business Practice is inconsistent with the purpose of Section 22.2 of the pro forma tariff, which "was intended to provide flexibility to transmission customers to permit them to react in a competitive market."¹⁰ MidAmerican explains that it has requested MAPP to permit firm redirect for a portion of the original reservation period, including on a daily basis. This request, however, has been rejected by MAPP.¹¹

6. With regard to any pricing disparity which may occur between different paths available under Schedule F if MAPP's Business Practice were to be discontinued, MidAmerican is willing to be charged different rates for the different paths that could be used for redirected service.

B. Notice of Complaint, Interventions and Answer

7. Notice of the complaint was published in the Federal Register, 68 Fed. Reg. 34,598 (2003), with answers, protests and interventions due on or before June 19, 2003. Timely interventions were filed by the Western Area Power Administration and Reliant Resources, Inc., and timely joint interventions were filed by Duke Energy North America, LLC and Duke Energy Trading and Marketing L.L.C.; and by Northern States Power Company and Northern States Power Company (Wisconsin). Timely

⁹See Dynegy Power Marketing, Inc. v. Southwest Power Pool, Inc., 96 FERC ¶ 61,275 (2001), order on clarification, 97 FERC ¶ 61,340 (2001), order on reh'g, 99 FERC ¶ 61,054 (2002) (Dynegy Power).

¹⁰Citing Commonwealth Edison Co., 95 FERC ¶ 61,027 (2001).

¹¹On June 16, 2003, MidAmerican made an informational filing informing the Commission that MAPP had rejected a proposal to rescind the Schedule F business practice on June 13, 2003.

interventions supporting MidAmerican's complaint were filed by Tenaska Power Services Co., and Westar Energy Inc. and Kansas Gas & Electric Company (filed jointly). MidAmerican filed an answer in response to MAPP's answer.

C. MAPP's Answer

8. MAPP argues that Schedule F is not a pro forma tariff. MAPP explains that although Schedule F is modeled after the pro forma tariff, it is different in several respects. These include: (1) no Network Integration Transmission Service under Schedule F; (2) Schedule F is not the exclusive means by which transmission customers arrange point-to-point transmission service in the MAPP region; (3) certain rights and obligations under the pro forma OATT are absent from Schedule F; (4) no rollover rights are associated with Schedule F, nor is there an obligation to build. In addition, MAPP argues that because the Business Practice was accepted under delegated authority, the Commission is bound by its terms under the filed rate doctrine.

9. MAPP asserts that it is winding down Schedule F so that its members may transition to a regional transmission organization (RTO), so the costs associated with modifying the current Business Practice would not be an efficient use of resources. It says that the implementation of such modifications could lead to significant disruptions in Schedule F services. Specifically, MAPP states that implementation of procedures and a system to accommodate the redirection on a firm basis for periods as short as one day would: (1) require the addition of one to two additional employees; (2) increase response time to service requests from the current two hours to a possible seven days; and (3) result in the expenditure of approximately \$630,000 in software upgrades. MAPP notes that it has voted to "freeze" Schedule F once the MAPP Transmission System is reduced to less than 4.585 million MW-miles (as members join RTOs) and that the event most likely to trigger the freeze is the TRANSLink operational date.¹²

10. MAPP next asserts that MidAmerican's complaint has already been addressed because MAPP's Regional Transmission Committee recently voted to amend Schedule F (as proposed in Docket No. ER03-972-000, discussed below) to remove the requirement

¹²See TRANSLink Transmission Company, L.L.C., 99 FERC ¶ 61,106 (order authorizing disposition of jurisdictional facilities to form an independent transmission company to participate in the Midwest ISO Regional Transmission Organization), order on reh'g, 101 FERC ¶ 61,140 (2002). MidAmerican intends to be a member of TRANSLink. MAPP indicates that TRANSLink is anticipated to become operational prior to January 1, 2004.

that transmission customers exclusively use Schedule F (not the MAPP members' individual OATTs) for short-term firm and non-firm transmission service of six months or less. MAPP requests that the Commission consolidate MidAmerican's complaint and MAPP's filing in Docket No. ER03-972-000.

11. MAPP argues that if the Commission does direct MAPP to discontinue its Business Practice, then it should allow the use of "higher of" pricing for firm redirects. As a result, transmission customers would pay the higher of the charge for hourly firm point-to-point transmission service for service over the secondary path or the original charge for service during the applicable period. MAPP asserts that such pricing is necessary to prevent the potential for gaming within the MAPP footprint which may occur as a result of price swings from redirecting firm service from a high cost path to a low cost path.

III. Docket No. ER03-972-000

A. MAPP's Tariff Filing

12. On June 19, 2003, MAPP filed a proposed amendment to remove the exclusive use requirements in Section 2.1 of Schedule F for point-to-point transmission service for periods of six months or less. MAPP asserts that the proposed amendment will allow a transmission customer to use the applicable member's OATT to reserve point-to-point service for any time period and to do firm redirects for periods less than the balance of the original reservation. MAPP notes that transmission customers will still be able to reserve firm service under Schedule F for periods up to six months, but any firm redirects will be subject to MAPP's Business Practice, *i.e.*, will have to be for the remainder of the original reservation. MAPP requests waiver of the Commission's sixty-day prior notice requirement to allow the proposed amendment to become effective June 21, 2003.

B. Notice of Filing and Comments

13. Notice of the tariff filing was published in the Federal Register, 68 Fed. Reg. 39,535 (2003), with interventions, comments and protests due on or before July 10, 2003.

14. MidAmerican filed a timely comment supporting MAPP's proposal to eliminate the exclusive use provisions of Schedule F. MidAmerican asserts that while the proposed amendment does not resolve MidAmerican's complaint in Docket No. EL03-130-000, the proposed amendment will provide greater flexibility to transmission customers in the MAPP region, thereby fostering greater economic efficiency and a better functioning market.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to allow MidAmerican's answer and will, therefore, reject it.

16. We also deny MAPP's request for consolidation. The issues presented in the instant filings are separate and distinct, as discussed below.

B. Analysis

1. MAPP's Business Practice

17. We find MAPP's failure to provide redirections for less than the balance of the term of the original reservation to be unjust and unreasonable and inconsistent with Commission precedent. We will grant in part the remedy requested by MidAmerican and require MAPP to implement Schedule F consistent with our ruling in Dynegy Power to permit redirections in point-to-point transmission service for periods less than the remainder of the original reservation.

18. We note that in Dynegy Power, the Commission granted Dynegy Power's request that SPP be required to cease enforcement of its balance of the term limitation on firm redirect requests. Dynegy Power's complaint addressed long-term firm point-to-point transmission service. In this case, MidAmerican has requested a specific redirect period of as little as a day under an OATT that provides exclusively for short-term point-to-point transmission service of six months or less. In addition, the OATT in question is scheduled to expire in the near future once certain MAPP member companies transition to Regional Transmission Organizations. Contrary to MidAmerican's assertion, the Commission did not require in Dynegy Power that SPP allow redirects of firm point-to-point transmission service on a daily basis. Due to the unique circumstances presented in this case, we will deny at this time MidAmerican's request that we direct MAPP to adopt a specific minimum period for firm redirects.

19. In directing MAPP to allow for firm redirects of less than the remaining term of the point-to-point service, we must balance the significant costs of implementing the new

Business Practice against the need for flexibility that fosters a competitive market and the availability of other avenues for transmission customers to gain the same flexibility.

Therefore, we direct MidAmerican and MAPP to negotiate a time period for redirect that provides more flexibility than is now provided, but also minimizes the costs of changing the two-year-old Business Practice for an OATT that is likely to be short-lived. To assist in these efforts, the Commission will make available to the parties our settlement judge procedures. MAPP is directed to submit, within 30 days of the issuance of this order, an informational filing reflecting a revised Business Practice concerning redirections, including a statement indicating whether or not the revised Business Practice is supported by the parties to this proceeding. If this revised Business Practice is not supported by the parties, we will take further action. In addition, MAPP has requested certain rate treatment consistent with any revised Business Practice. To the extent MAPP seeks revised rates, it must make a sSection 205 filing.

20. We find MAPP's argument that Schedule F is not a pro forma tariff to be inaccurate. It is clear that the Commission required MAPP to insert language consistent with the pro forma language regarding firm redirections.¹³ Therefore, MAPP is required to offer redirect service under Schedule F that complies with the requirements of Order No. 888.

21. In addition, we reject MAPP's argument that because the Business Practice was accepted the Commission cannot require it to be revised because of the filed rate doctrine. The Commission here is acting under Section 206 of the Federal Power Act in response to Mid American's complaint and is making the finding that MAPP's failure to provide redirections for less than the original reservation is unjust and unreasonable.

22. We note that MidAmerican and other customers now have additional avenues to gain redirect flexibility, including the use of applicable MAPP member's OATTs to reserve point-to-point transmission service for any time period and to redirect firm service for periods less than the balance of the original reservation, as discussed below. Moreover, once MidAmerican's membership in the Midwest ISO is complete, the Midwest ISO OATT will provide the redirect flexibility that MidAmerican seeks along with a single rate for transmission service in, through or out of the Midwest ISO footprint.

¹³See supra note 4.

2. Exclusivity under Schedule F

23. We will accept MAPP's uncontested proposed amendment to Schedule F for filing, effective June 21, 2003, as requested.¹⁴ The elimination of the "exclusive use" requirement of Schedule F will provide greater flexibility to transmission customers in the MAPP region, thereby fostering greater economic efficiency and a better functioning market.

The Commission orders:

(A) MidAmerican's requested relief is granted in part, and denied in part, as discussed in the body of this order.

(B) MAPP is hereby directed to submit, within 30 days of issuance of this order, an informational filing reflecting a revised Business Practice concerning redirections, as discussed in the body of this order.

(C) MAPP's proposed tariff filing is hereby accepted for filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁴ See Central Hudson Gas & Electric Corporation, 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992).